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April 29, 1996

APR 29 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**RE: Comments of Motorola in Response to the Commission's
Notice of Proposed Rulemaking on Assessing and Collecting
Regulatory Fees for Fiscal Year 1996 (MD Docket No. 96-84)**

Dear Mr. Caton:

On behalf of Motorola Satellite Communications and Comm, Inc. ("Motorola"), please find enclosed for filing an original and four (4) copies of their initial comments in response to the Commission's rule making proceeding in the above-captioned matter.

We request that you place these comments in the appropriate public file and forward a copy of these comments to the Managing Director for his consideration.

Please date stamp and return our copy marked "Duplicate Original" to the messenger. If there are any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Philip L. Malet
Brent H. Weingardt
Counsel for Motorola Satellite
Communications, Inc. and Comm, Inc.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Assessment and Collection of Regulatory Fees for Fiscal Year 1996

MD Docket No. 96-84

COMMENTS OF MOTOROLA

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April 29, 1996

SUMMARY

Motorola Satellite Communications, Inc. and Comm, Inc., wholly-owned subsidiaries of Motorola, Inc. ("Motorola"), submit these comments in response to the Commission's Notice of Proposed Rule Making on Fiscal Year 1996 Regulatory Fees.

Motorola supports the Commission's proposal to simplify its various earth station fees by creating a single category called "Earth Station" with a charge of \$335 per authorization or registration. Motorola urges the Commission, however, to clarify that its definition of Mobile-Satellite Service (MSS) blanket Earth station licenses includes hand-held as well as vehicle-based subscriber units.

Motorola urges the Commission to reconsider the timing of its imposition of annual fees on low-Earth orbit (LEO) MSS systems. Rather than imposing an annual fee for a LEO System once its first satellite is in orbit, the Commission should impose this system charge once the entire planned constellation is in orbit and authorized to provide service. Delaying the regulatory fee until this point would be consistent with the Commission's treatment of geostationary satellites.

In the alternative, the Commission should defer the annual regulatory fee for "Big LEO" System licenses until these systems are operational and providing service to the public. A deferral of regulatory fees would be consistent with the Commission's actions on PCS, DBS and other new services.

Finally, Motorola supports the Commission's proposal to allow regulatees with either single or combined fees of greater than \$12,000 to pay these fees in two installments. The Commission should clarify its existing rule to reflect this alternative.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Assessment and Collection
of Regulatory Fees for
Fiscal Year 1996**

MD Docket No. 96-84

COMMENTS OF MOTOROLA

Motorola Satellite Communications, Inc. and Comm, Inc., wholly-owned subsidiaries of Motorola, Inc. ("Motorola"), hereby submit their initial comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released April 9, 1996, in the above-captioned proceeding.

Motorola's interest in this proceeding stems from the Commission's proposals regarding regulatory fees for satellite Earth stations and Low Earth Orbit (LEO) Satellite Systems. Motorola Satellite Communications, Inc. recently received a license from the International Bureau to construct, launch and operate the IRIDIUM® System in the 1.6 GHz MSS/RDSS band on a bi-directional basis.^{1/} It has yet to launch its first LEO satellite for this system, but expects to do so shortly. The IRIDIUM® System will also require several fixed and/or mobile earth station facilities that the Commission has yet to authorize. In addition, Comm, Inc. recently submitted an

^{1/} Motorola Satellite Communications, Order and Authorization, 10 FCC Rcd 2268 (Int'l Bureau 1995).

application to provide broadband Geosynchronous Orbit (GSO) Fixed-Satellite Service (FSS) through four satellites in the 28/18 GHz bands.^{2/} This broadband satellite system will also require several fixed and/or mobile earth station authorizations.

Motorola supports the Commission's proposal to simplify its various Earth station fees by creating a single category called "Earth Station" with a charge of \$335 per authorization or registration.^{3/} Motorola urges the Commission, however, to clarify that Mobile Satellite Service (MSS) blanket Earth station licenses include hand-held as well as vehicle-based subscriber units.

Motorola also urges the Commission to reconsider the timing of its imposition of annual fees on LEO satellite systems. Rather than imposing an annual fee for a LEO System once its first satellite is in orbit and operational, the Commission should impose this "system" charge only after the entire planned constellation is in orbit and authorized to provide service. If the Commission retains the orbiting of a LEO licensee's first satellite as its fee triggering event, Motorola asks that the Commission clarify that LEO satellites launched under an experimental license do not trigger the annual regulatory fee. In the alternative, the Commission should defer the annual regulatory fee for "Big LEO" System licenses until these systems are operational and providing service to the public. This treatment would be consistent with the Commission's fee deferrals for PCS, DBS and other new services.

^{2/} Comm Inc.'s GSO-FSS application was filed with the Commission on September 29, 1995 under the name of "Millennium."

^{3/} NPRM at ¶ 7 and Appendix F, ¶ 5a.

Finally, Motorola supports the Commission's proposal to allow regulatees with either single or combined fees of greater than \$12,000 to pay these fees in installments. The Commission should clarify its existing rule to reflect this alternative.

I. THE COMMISSION SHOULD ADOPT ITS EARTH STATION PROPOSAL WITH A CLARIFICATION AS TO BLANKET LICENSING

The Commission has proposed to simplify its regulatory fees for all transmitting Earth stations. Rather than list the various types of transmitting earth stations in its fee rules,^{4/} the Commission proposes to create a single fee category entitled "Earth Stations" and impose an annual fee of \$335 per earth station authorized or registered.^{5/} Motorola supports this proposal. Motorola suggests that the Commission may wish to rename the category "Transmitting or Transmit/Receive Earth Stations (All Types)" to differentiate these earth stations from receive-only earth stations, for which there is no fee.^{6/}

Motorola urges the Commission to clarify one aspect of its proposal. At Appendix F of the NPRM, the Commission indicates that mobile satellite earth stations will be subject to the same charge as other transmitting earth stations:

^{4/} 47 C.F.R. § 1.1156.

^{5/} NPRM at ¶ 7.

^{6/} Motorola also suggests that the Commission's Rules cite to the location in the Federal Register or FCC Record where Appendix F (FY 1996 Guidelines For Regulatory Fee Categories) may be reviewed. This Appendix contains essential guidance as to the Commission's delineation of feeable products. Placing the entire Appendix in the Rules would needlessly burden the C.F.R. if the Appendix is readily available elsewhere.

Mobile Satellite Earth Stations, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks.^{7/}

The footnote to this description states that "[m]obile earth stations are vehicle-based units capable of operation while the vehicle is in motion."^{8/}

The definition of MSS blanket licenses is too narrow and may be read to exclude the various types of blanket licenses for MSS transceivers that the Commission has authorized or will soon authorize. For example, the Commission has authorized Motorola and others to provide "Big LEO" Mobile Satellite Services through hand-held mobile terminals.^{9/} U.S. Leo Services, Inc. a Motorola subsidiary, has pending before the Commission an application to construct and operate up to 200,000 hand-held transceivers.^{10/} In the "Little LEO" Mobile Satellite Service, ORBCOMM has received blanket authority to construct and operate up to 200,000 mobile earth stations for vehicle or personal use.^{11/} The Commission has also granted several blanket MSS earth station licenses that do not limit a subscribers' earth station to vehicle mounting.^{12/}

^{7/} **NPRM** at Appendix F, ¶ 33 F-11.

^{8/} **Id.** at n. 7.

^{9/} **Motorola Satellite Communications**, 10 FCC Rcd 2268 ¶ 3 (1995), **TRW, Inc.**, 10 FCC Rcd 2263 (1995), **Loral/QualComm Partnership, L.P.**, 10 FCC Rcd 2333 (1995).

^{10/} File No. 423-DSE P/L-96.

^{11/} **Orbital Communications Corp.**, 10 FCC Rcd 6572 (1995).

^{12/} **See, e.g., Mobile Datacom Corporation**, 10 FCC Rcd 4552 (1995); **AMSC Blanket License to Construct and Operate Up to 200,000 L-Band Mobile Earth Stations**, DA 95-482, released March 13, 1995; **USA Today Sky Radio**, 7 FCC Rcd 7943 (1992).

The Commission should clarify Appendix F to indicate that the earth station fee of \$335 per authorization applies to a blanket license for mobile antennas (transceivers) irrespective of their size or means of use.^{13/}

II. THE COMMISSION SHOULD NOT IMPOSE A REGULATORY FEE ON A LEO SYSTEM UNTIL THE LICENSEE'S ENTIRE CONSTELLATION IS IN ORBIT AND OPERATIONAL

The Commission proposes to charge Low Earth Orbit (LEO) Satellite System licensees an annual charge of \$87,725 per operational system in orbit. However, this regulatory fee would commence once a LEO System has its first operational satellite in orbit. Imposition of an annual charge upon the launch and orbiting of just one LEO satellite would be premature. This charge is particularly unfair for Big LEO Systems, which will not become operational until substantially all of their satellites are in orbit.

A LEO satellite system typically is not "operational" until all of its authorized constellation of satellites is in orbit. The Commission has recognized the fundamental fairness in delaying its annual regulatory charge for other radio services until licensees are able to provide service to the public and should do so for LEO MSS systems.

^{13/} The Commission now has before it several proposals for Fixed-Satellite Service use of the Ka-band that would involve fixed antennas (transceivers) for subscriber use. It should clarify that its per blanket authorization charge would apply to blanket authorizations for fixed Earth stations as well.

A. A LEO Satellite System Licensee Should Not be Assessed an Annual Fee Until Its Constellation Of Satellites Is In Orbit and Operational

Unlike GSO satellite systems, which typically become operational upon the launch and orbiting of just one satellite, LEO systems generally cannot operate under the terms of their licenses until their entire constellation of satellites is in orbit.¹⁴ It may take years for such systems to deploy all of their satellites.

The Commission has repeatedly recognized the distinctive nature of LEO systems. Unlike GSO systems, which can offer service to the public once the licensee's first (or only) satellite is placed in orbit, a LEO satellite service generally is not able to serve the public until its entire authorized constellation of satellites is in orbit. In its Big LEO rulemaking proceeding, the Commission defined LEO systems as follows:

We use the term "low-Earth orbit satellite system" to describe any system that is not operating in geostationary satellite orbit. This includes systems operating in lower-altitude orbits, medium-altitude orbits, and highly elliptical orbits.¹⁵

Elsewhere, the Commission indicates that LEO systems "involve constellations of technically identical satellites that may be launched and retired at different times."¹⁶

¹⁴ By "operational", Motorola means that the licensee is ready and able to provide the MSS communications services under the terms of its FCC instrument of authorization.

¹⁵ Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Notice of Proposed Rulemaking, 9 FCC Rcd 1094, 1097 n.6 (1994) (emphasis added).

¹⁶ Id. at ¶ 82.

Moreover, the Commission's Big LEO Rules expressly recognize that a LEO system cannot consist of one satellite and that an applicant must "demonstrate that the proposed system employs a non-geostationary constellation or constellations of satellites."^{17/}

The Commission's regulatory fee definition of a "LEO System" should be consistent with the Commission's operational and service rules for this service.^{18/}

Otherwise, LEO system licensees will be forced to pay inequitable fees well before they are able to provide service to the public.^{19/}

The Commission can change the effective date for first imposing an annual charge on a LEO System with little or no administrative inconvenience. Today, a LEO System licensee is subject to an annual regulatory fee once it informs the Commission, in accordance with Section 25.120(d) of the Rules, that its initial satellite has been placed in orbit and that its operations conform to the terms of its space

^{17/} See, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Report and Order, 9 FCC Rcd 5936, 5944-5948 (1994); these rules are codified at 47 C.F.R. § 25.143(b).

^{18/} In addition, the Commission should clarify that LEO space stations launched and operating under experimental licenses do not trigger an annual charge.

^{19/} For example, under the Commission's proposed formula, upon the launch of just one LEO satellite, the LEO licensee will begin paying \$87,725 for its one satellite while a GSO licensee would pay only \$63,500 for one satellite, a 38.5% differential. NPRM at 14-15. This differential is unjustified in terms of regulatory services provided to the still-under-construction LEO system. The differential is completely unfair in that the LEO system is not, by the Commission's own rules, in a position to operate as a LEO system while the GSO licensee is in position to provide service to the public upon notification to the Commission.

station system authorization.^{20/} Instead, the Commission could identify the date when a LEO System is operational by imposing the fee after the licensee informs the Commission in accordance with Section 25.143(e)(2) that it has met the implementation milestone that places the authorized number of satellites into orbit and that the satellites conform to the licensee's authorization.^{21/}

B. The Commission Should Delay the Regulatory Fee for Big LEO Systems Consistent With Its Treatment of Other Radio Services

The Commission has repeatedly recognized that it should not impose annual license fees on radio services that are not yet ready or authorized to provide service to the public. It should do the same for Big LEO System licensees.

In the NPRM, the Commission concludes that it is premature to impose fees on PCS licensees despite the fact that these licensees are authorized to provide service to the public.

We are not proposing that PCS licensees pay a regulatory fee for FY 1996 because the service is, at most, in the very early start-up phase with few subscribers on the date (December 31, 1995) established for determining liability for such a fee and, therefore, it is premature to assess a fee.^{22/}

^{20/} Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, 9 FCC Rcd 5333, 5364 (1994) citing 47 C.F.R. § 25.120(d).

^{21/} 47 C.F.R. § 25.143(e)(2). After this certification, the licensee would be subject to the LEO System fee even if the number of authorized satellites in its system fell below its maximum permissible number.

^{22/} NPRM at n.2.

For Direct Broadcast Satellite (DBS) licensees, the Commission deferred fees in 1995 because most of the FCC's DBS-related resources were devoted to application processing, regulatory duties were negligible and DBS operators served few subscribers.^{23/}

The Commission should similarly treat all Big LEO System licensees by deferring a charge until a later date. It can accomplish this by reclassifying, for the purposes of fee payments, Motorola and the other LEO System licensees authorized under Section 25.143 of the Rules as "Big LEO Systems." Unlike the non-voice, non-geostationary (NVNG) "Little LEO" service or the geostationary Mobile-Satellite Service provided by American Mobile Satellite Corporation, no Big LEO licensee is providing service to the public today. Until these Big LEO Systems are completely launched and in orbit, the costs they impose on the Commission are primarily application processing functions, which the Big LEO System licensees have already paid for through substantial Section 8 application fees.^{24/}

^{23/} **NPRM** at ¶ 40. For 1996 the Commission tentatively concludes that a fee is appropriate since the service is operational, serving numerous subscribers and therefore imposing policy and rulemaking, enforcement and public information costs on the agency.

^{24/} The Commission has ample authority under the Communications Act to make this distinction. As it noted in 1995, Congress gave it authority to make changes to the Regulatory Fee Schedule, "including adding, deleting or reclassifying services" when it determines that such changes are necessary to ensure that such fees are reasonably related to the benefits provided to the payor of the fee by the FCC's activities. "Congress intended that we modify the fee structure in instances where we find that a revision to the Regulatory Fee Schedule better reflects the relative benefits licensees receive from our regulatory activities and achieves a more equitable distribution of the fee burden." Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Report and Order, 77 RR 2d 151, 165 ¶ 87 (1995) (emphasis added).

III. THE COMMISSION SHOULD IMPLEMENT ITS INSTALLMENT PAYMENT PROCEDURES

Motorola supports the Commission's proposal to permit installment payments for single or combined fees greater than \$12,000. As Motorola understands this proposal, a licensee with a single regulatory fee of more than \$12,000 or a licensee with several regulatory fees that total more than \$12,000 may pay these fees in either two equal installments or in one payment when the second installment would be due.^{25/} If this is correct, Motorola urges the Commission to clarify its installment rule in several respects.^{26/} First, the dollar amount that triggers the right to pay in installments should be expressly set out in the rule. Next, the rule should indicate that combined fees from a single licensee that exceed the triggering dollar amount can be paid in installments. Finally, the rule should indicate that only two equal installment payments will be permitted.

IV. CONCLUSION

Motorola supports the Commission's proposal to simplify its Earth station regulatory fees. However, it urges the Commission to clarify that the blanket licensing charge applies to all blanket licenses, not only those for MSS vehicle-mounted transceivers. The Commission should also modify its definition of an operational LEO Satellite System for the purpose of subjecting these licensees to fees. The fee should be imposed only after the licensee has placed into orbit its authorized constellation of

^{25/} NPRM at ¶ 54-55.

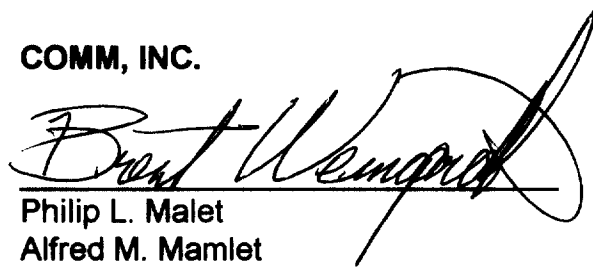
^{26/} 47 C.F.R. § 1.1157(b)(2)

satellites, not when it places the first satellite into orbit. In the alternative, the Commission should exercise its discretion to defer fees for "Big LEO Satellite Systems" until these systems become operational.

Respectfully submitted,

**MOTOROLA SATELLITE
COMMUNICATIONS, INC.**

COMM, INC.

A handwritten signature in black ink, appearing to read "Brent H. Weingardt", is written over a horizontal line.

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April 29, 1996

CERTIFICATE OF SERVICE

I, Brent H. Weingardt, do hereby certify that a copy of the foregoing **Comments of Motorola** has been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 29th day of April, 1996 to the following:

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- * Commissioner James H. Quello
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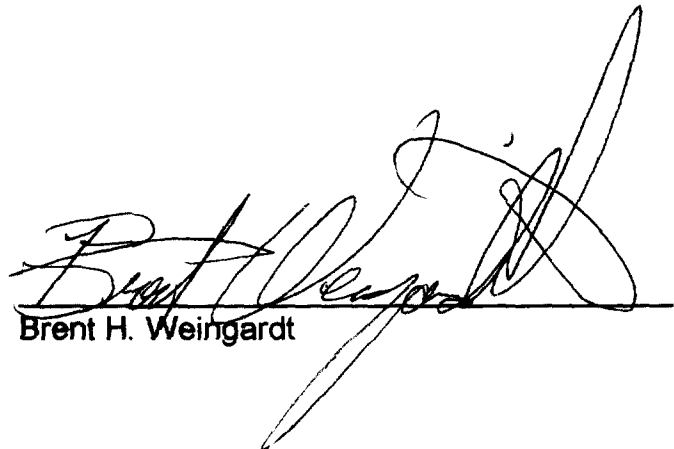
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